

abuse, illegal drug abuse, and violent crimes with guns. All of those combined do not equal the number of deaths that occur because of people's use of tobacco and tobacco products. That does not include the number of people who lead very debilitated lives, who are stricken with emphysema or related pulmonary illnesses that fundamentally alter their lives and the lives of their families.

I apologize to my colleagues for continuing to recite these numbers, but I pray and hope these numbers may have some impact on those who wonder if every aspect of the bill makes the most sense or not. None of us should ever claim perfection, but we have spent a lot of time on this, a lot of consideration on this. There are 1,000 organizations, faith-based, State organizations—leading organizations dealing with lung cancer and related problems and they are all speaking with one voice. They are telling us to pass this bill, pass this bill, and allow finally for the FDA to be able to control the marketing, the selling, and the production of these tobacco products.

Absent any action by this Congress, more than 6 million children who are alive today will die from smoking. Mr. President, 1 out of 5 children from my State of Connecticut smokes today, and 76,000 children, we are told by health care professionals, will die prematurely because of their addiction to tobacco.

As I mentioned earlier, we are on the eve of passing major health care reform legislation. The centerpiece of that bill, as I hear my Republican friends and Democratic friends talk about it, is prevention. That is the one piece about which there is a great deal of unanimity. How can we deal with health care reform? The best way to treat a disease is to have it never happen in the first place. This bill may do more in the area of prevention, if adopted, than anything else we may include in the health care bill in the short term. The estimates are that 11 percent of young people would not begin the habit of smoking if this bill is adopted. Imagine 11 percent of the young people not smoking of that 3,000 to 4,000 every day who start. That in itself would be a major achievement.

My friend from North Carolina, Senator BURR, does not give authority to the FDA. The FDA is 100 years old. His bill creates a completely new agency, an untested agency, to oversee tobacco products. But the FDA is the right agency because it is the only agency that has the regulatory experience and scientific experience and the combination of that with a public health mission. Unlike the Kennedy bill, the underlying bill, the Burr substitute fails to provide adequate resources to do the job. In the first 3 years, if the Burr substitute is adopted, it would allocate only one-quarter of the funding allocated in Senator KENNEDY's proposal. The Burr substitute fails to give the authority to remove harmful ingredi-

ents in cigarettes, which the Kennedy bill would do. It doesn't go far enough in protecting children and has weaker and less effective health warnings as well.

I say respectfully to my friend, setting up and creating a whole new agency, providing a fraction of the funding necessary to get it done, and providing inadequate resources in order to support these efforts is not the step we ought to be taking. All of us can agree that the FDA is basically the agency we charge with the responsibility of regulating everything we consume and ingest, including the products ingested by our pets. The FDA has jurisdiction over your cat food, dog food, and what your parakeet may have, but your child's use of tobacco is not regulated by anybody. Your child's safety, in many ways, is being less protected than that of a household pet. That needs to change.

For a decade, we have debated this. We have been through countless arguments. Now we have come down to the moment as to whether this Congress, in a bipartisan fashion, as we did yesterday, will say enough is enough. We have come to the end of the debate.

Mr. President, 400,000 people are losing their lives every day, and 3,000 to 4,000 children are starting to smoke, a thousand of whom will be addicted for life, and one-third of that number will die because of the use of these products. That is over with. The marketing, the production, as well as the selling of these products has to come to an end. This is the best way to save money, if you are not impressed with the ethics and morality of the issue.

This is a self-inflicted wound we impose on ourselves as a country, knowing the damage it causes, the costs it imposes, the hardships, the horror, and the sorrow it brings to families. I don't know a single person who smokes and wants their child to begin that habit. If they could stand here collectively—the families across this country who are smokers—they would say with one voice: Pass this bill. Please do everything you can to see to it that my child doesn't begin that habit.

Ninety percent of smokers start as kids, we know that. So we need to change how we regulate these products. That is what this bill does. It has had tremendous support from our friends, both Republicans and Democrats, over the years. We have never done it together, and we are on the brink of doing that and making a significant change in our country for the better. It is long overdue.

When the vote occurs on the Burr amendment, I urge my colleagues to vote against the amendment. I want to do everything I can to help those farmers. The bill makes a difference in providing real help to the farmers. I see my friend from Kentucky. He knows I went to law school there, and he knows I have an affection for the people there. We owe it to them to provide real help so they can get back on their feet. I

say to my friend from North Carolina, and others, I know what it means to have an industry in your State face these kinds of challenges, but clearly the challenge to our Nation is to begin to reduce the number of children who smoke and to save lives every year. I say respectfully that there is no more paramount issue for our Nation as a whole.

I urge my colleagues to reject the Burr amendment.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, the ranking member of the Senate Judiciary Committee, Senator SESSIONS, Senator KYL, and I will take a few moments to discuss the pending Supreme Court nomination and the proceedings leading up to that. I have notified the Democratic floor staff that it might slightly delay the 4:20 vote. I find that not objectionable on the other side.

I would inform our colleagues that we are going to proceed as if in morning business. I ask unanimous consent that we may do so.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. It will not cause much of a delay on the 4:20 vote.

Senator SESSIONS is up and will be first to speak.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

SOTOMAYOR NOMINATION

Mr. SESSIONS. Mr. President, I thank Senator MCCONNELL for his leadership in so many ways but in particular the concern he has shown repeatedly on the U.S. judiciary. He is on the Judiciary Committee, and he takes these issues seriously. I think it is important that we all do so.

I have to say I am disappointed that this morning we learned from media reports—I did—that the chairman of the Judiciary Committee, Senator LEAHY, announced we would begin the hearings on July 13 on Judge Sotomayor. I believe that is too early. I don't believe it is necessary. It is far more important that we do this matter right than do it quick. When the announcement was made, President Obama said the time we should look to is October 1, when the new Supreme Court term starts. I think that always was an achievable goal, and it is something I said I believe we could achieve and still do it in the right way.

The question is, Can we get all this done in this rush-rush fashion? It will be the shortest confirmation time of any recent nominee. It is a time well shorter than that of Justice Roberts—now Chief Justice—and we had a need to move that a bit because he was confirmed, as it turned out, on September 29, a couple of days before the new term began. He was going to be Chief Justice. But the last nominee, whose record was much like this nominee, Justice Alito, was coming up in late December, and the Democratic leader

then on the Judiciary Committee, Senator LEAHY, asked that it be put off until after Christmas. The Republican chairman at that time, Senator SPENCER, despite President Bush's desire that it move forward, said: No, I think that is a reasonable request, and so we put it off. It was 90-some-odd days before that confirmation occurred. It was well over 70 days before the hearings began.

Mr. President, first and foremost, we are committed to giving this nominee a fair, good, just hearing. But to do so requires that we have an opportunity to examine her record of probably more than 4,000 cases. In addition to that, she has given a lot of speeches and written law review articles, which need to be analyzed.

Make no mistake about it, this is the only time, the only opportunity this Congress and the American people have to play a role in what will turn out to be a lifetime appointment, an appointment to a Federal bench of independence and unaccountability for the rest of their lives. I think it is important that we do this right.

I thank Senator MCCONNELL for his leadership in trying to insist that we do it right. I believe, from what I know today, the timeframe set forth is unrealistic. More than that, it is not necessary. Let's do this right, take our time, and do it in a way that I hope—as I have said repeatedly, this would be what people could say is the finest confirmation process we have ever had.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I thank my good friend from Alabama for his observation about this nomination. He and I have been involved in a number of these confirmation proceedings over the years. In every one of them, I think there is a sense of fairness that can be reached on a bipartisan basis so that the nominee is adequately and appropriately vetted. That is what the Senator from Alabama is looking for as we go forward on the Judiciary Committee.

Frankly, I was surprised to learn that the majority decided unilaterally, basically, that the schedule would involve hearings beginning on that specific date, July 13, to which Senator SESSIONS referred.

During the Senate's consideration of both the Roberts and Alito nominations, we heard a lot from our Democratic colleagues about how the Senate wasn't a rubberstamp and about how it was more important to do it right than to do it fast. If that was the standard, I suggest to our colleagues, just a few years ago, why wouldn't it be a good standard today? If that was the standard when the Republicans were in the majority, why wouldn't it be a good standard when the Democrats are in the majority? We are talking about the same Supreme Court, the same lifetime appointment to which Senator SESSIONS referred.

The chairman of the Judiciary Committee, today, said back then that "We need to consider this nomination as thoroughly and carefully as the American people deserve. It is going to take time." That was Senator LEAHY then. He also said, "It makes sense that we take time to do it right." I think the American people deserve nothing less. He also said that we want to do it right, we don't want to do it fast. Again, if that was the standard a few years ago when Republicans were in the majority, I don't know why it wouldn't be the standard today.

I don't know what our friends in the majority are fearful of. This nominee certainly has already been confirmed by the Senate twice. She has an extensive record, and it takes a while to go through 3,600 cases. In the case of the Chief Justice, there were only 327 cases. He had only been on the circuit court for a couple of years. She has been on one court or another for 17 years. It is a larger record. I am confident, and our ranking member, Senator SESSIONS, confirms that the staff is working rapidly to try to work their way through this lengthy number of cases. But a way to look at it is the committee had to review an average of six cases a day in order to be prepared for Judge Roberts' hearings—six cases a day. The committee will now have to review an average of 76 cases—76 cases—per day in order to be ready by the time the majority has proposed for the Sotomayor hearing.

The Senate functions on comity and cooperation, and the majority leader and I are a big part of that every day, trying to respect each other's needs and trying to make the Senate function appropriately. Here the Democratic majority is proceeding, in my view, in a heavy-handed fashion, completely unnecessary, and is basically being dismissive of the minority's legitimate concerns of a fair and thorough process. There is no point in this. It serves no purpose, other than to run the risk of destroying the kind of comity and cooperation that we expect of each other in the Senate, all of which was granted in the case of Chief Justice Roberts and Justice Alito.

Let me be clear. Because of what our Democratic colleagues are doing and the way they are doing it, it will now be much more difficult to achieve the kind of comity and cooperation on this and other matters that we need and expect around here as we try to deal with the Nation's business.

I hope they will reconsider their decision and work with us on a bipartisan basis to allow a thorough review of this lengthy record that the nominee possesses.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I wish to join the ranking member of the committee on which I sit, as well as the distinguished minority leader, in asking the question of why we have to set

a date right now on the hearing for Judge Sotomayor. There is no reason for us to do that because there is no way to know at this point whether we will have our work done by that time.

Historically—and it is for good reason—you want to have the review completed before you question the witness about the matters under review. That makes sense. So there is no reason to set that date today, and that is troublesome. We don't know if we will be ready by July 13, but there is a lot of history to suggest it is going to be very difficult to be ready by that time.

The leader just pointed out the fact that if you compare the work required to consider the nomination of the now-Chief Justice John Roberts as opposed to this nominee, you have more than 10 times as many cases to look at with Judge Sotomayor as you had with Justice Roberts. That takes a lot of time. And even with 20-some staffers reading these 4,000-plus decisions, it is not just a matter of reading the cases; it is a matter of then looking to see what the precedents cited were to determine whether you think the judge was right in the decision that was rendered, to look at the other references in the case to see how closely this followed existing law, and whether it appears the judge might be trying to make law as opposed to deciding law.

That is important in this particular case because of the standard the President laid down for his nominees which strongly suggests something beyond deciding the law. In 5 percent of the cases, as he said, there is no precedent, there is no legal mechanism for deciding how the case should come out. You have to base it on other factors. Everybody is well aware of some of the factors this particular nominee has talked about and the President has talked about—the empathy, the background, the experience in other matters.

The question is, in reading these opinions, do you find a trend of deciding cases on something other than the law, potentially the making of law in this particular case? And even if, as the leader said, you have to review 76 cases a day, that is only the decisions she has participated in or the opinions she has written or joined in.

How about the other writings—her law review writings, her speeches she has given, the FBI report, the ABA report, which we do not have yet, the questionnaire which has not been completed; in other words, a variety of things that have been reviewed and read. And then you discuss the nomination with witnesses to say this matter has been raised, this matter has been raised, what do you think about that?

She will have a variety of people who will be writing to the committee on her behalf. We will receive reams of letters and comments from people who think she is a good nominee, and we will receive a lot of comments, I suspect, from people who think she is not a good nominee. We need to go through all of that. When people write to us

about these nominees, for or against, we don't ignore what they say; we take it to heart. That is part of our job. All of this takes a great deal of time and effort.

Final point, Mr. President. We don't want to leave this to staff. We are going to read those opinions. I have instructed my staff on the opinions I want to read. I am used to reading court opinions, but not everybody has done that fairly recently in their career, and that takes a lot of time as well, considering all the other work we have to do.

To do this right, to conduct the kind of fair and thorough hearing that Senator SESSIONS talked about, and to follow the kind of precedents and tradition that the minority leader talked about, I think it is important for us to do it right, to get it right, to take the time that requires. And if that means going beyond July 13, then do that.

Senator SPECTER, when he was chairman of the committee, worked in a bipartisan way with Senator LEAHY. Senator LEAHY can certainly work in a bipartisan way with us to ensure there is an adequate amount of time.

At the end of the day, what we want is a hearing that everyone can say was fair, was thorough, resulted in a good decision and, hopefully and presumably, will allow this nominee, if she is confirmed, to take her position prior to the beginning of the October term. Justice Roberts was confirmed, I believe, on the 29th of September, and that was 4 days ahead of the time, I think—or 2 days. The Court reconvenes on October 5. Therefore, I see no reason why, if we do this right, we cannot have the nominee—if this nominee is confirmed—confirmed by the time the October term begins.

I say to my colleagues, let's do this right and not try to push things beyond the point that is appropriate under the circumstances.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank Senator KYL for his leadership on this committee. He is one of the Senate's great lawyers. I appreciate his insights, as we all do.

I note that I think this rush is ill advised. In truth, the White House was determined to get the nominee's questionnaire to the Senate in a hurry. There were a number of cameras and crews and press releases that went out when boxes were delivered. In many ways, the questionnaire was incomplete, the result, I think, of that kind of rush. In others, the nominee failed to provide sufficient details that are required by the questionnaire.

For example, the judge did not include a troubling recommendation to the Puerto Rican Legal Defense Fund to lobby against a New York State law that would reinstate the death penalty, and it had quite a bit of intemperate rhetoric in it. After that was noted, she admitted she had failed to include but got that document in. But I suggest

perhaps if somebody had not been aware of that omission, maybe we would not have received that document at all. What else might she have failed to include that might be an important bit of information as our committee does its oversight work?

In addition, the nominee was supposed to provide opinions and filings for cases going to verdict, judgment, or final decision. For three cases, she indicates that the District Attorney's Office is searching its records for information on this case, and she did not provide those.

In 14 cases, she noted that she tried, the record is incomplete and not provided. So we don't have any documents related to these cases.

As another example, the nominee is supposed to list speeches, remarks, and lectures she gave and, in the absence of having a prepared text, to provide outlines, notes, and then a summary of the subject matter.

Several of the entries lacked any subject matter descriptions or are so vague as to be utterly uninformative, including these quotes I will note for the record, and we have had some problems with her speeches. A lot of speeches she has given she has no text for.

I note this is on her questionnaire: "I spoke on Second Circuit employee discrimination cases." She did not indicate what or give any summary of that.

Another one: "I spoke at a federal court externship class on 'Access to Justice.'" It is not clear what that was in any way, and no summary and certainly no text.

"I participated in a panel entitled 'Sexual Harassment: How to Practice Safe Employment.'" Similarly, no additional explanation.

Next: "I spoke on the United States judicial system."

Next: "I spoke on the topic 'Lawyering for Social Justice.' I discussed my life experiences and the role of minority bar organizations."

"I participated in a symposium on post-conviction relief. I spoke on the execution of judgments of conviction."

"I spoke on the implementation of the Hague Convention in the United States and abroad."

"I participated in an ACS panel discussion on the sentencing guidelines."

"I participated in a roundtable discussion and reception on 'The Art of Judging' at this event."

It would be nice to know what she thought about the art of judging.

"I contributed to the panel, 'The Future of Judicial Review: The View from the Bench' at the 2004 National Convention. The official theme was 'Liberty and Equality in the 21st Century.'"

Those are some of the things that I think are inadequate responses to the questionnaire's requirements. This questionnaire is one we have used for nominees of both parties for a number of years.

The chairman justifies this rushed schedule because of the need, he says,

to allow the nominee to respond to unfair criticisms of her record. But the chairman and all our Democratic colleagues know that the Republican Senators who will actually be voting on this nominee, I am confident and certain, have been nothing but extremely fair and courteous and respectful of the nominee. Even when she made mistakes, such as omitting several things from her questionnaire, we have not criticized her for that. So in return for this courtesy, I am disappointed that we are being rushed to complete this process in a time based on what I know now is not a wise approach. I don't think it is a good way to begin the proceedings.

I look forward to working with my colleagues on this date. Perhaps we can do better as we move forward. It is an important process. It is the public's only opportunity to understand what this is about. I think we ought to do it right. As Senator LEAHY has said, do not rush it.

I yield the floor.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, let me say a few words regarding the excellent work of the Judiciary Committee, the work that has been done by Chairman LEAHY. He has informed me that Senator SESSIONS has been most cooperative during the entire time Senator SESSIONS has had this new assignment.

Senator MCCONNELL asked me one day last week to delay a floor vote on Judge Sotomayor until after the August recess, and he sent me a letter, which I was happy to receive, making his case for this delay. I indicated to him this morning—he, Senator MCCONNELL—that I had a telephone call scheduled with the chairman of the Judiciary Committee and the President to go over the content of Senator MCCONNELL's well-written letter.

We had quite a long conversation with the President. Time? I don't know, 15 minutes, 10 minutes. But it was certainly enough to learn very quickly that the President was well versed on this nomination.

After having spoken with the President and the chairman of the committee this morning, I had an obligation to convey to Senator MCCONNELL my conclusion based on my conversation with the President.

What I wish to do now, Mr. President, is read into the RECORD a letter I had delivered this morning to Leader MCCONNELL:

DEAR MITCH:

Thank you for your letter regarding the process for considering the nomination of Judge Sotomayor to the United States Supreme Court. I have taken your concerns

into consideration and have discussed the confirmation process with the President and the Chairman of the Judiciary Committee.

Judge Sotomayor's judicial record is largely public and has been undergoing extensive review by all interested parties at least since the President announced her nomination on May 26. In addition, she has returned her questionnaire, including available records of her speeches and writings, in record time. Her record for review is now essentially complete.

In contrast, both Judge Roberts and Judge Alito had spent significant time in the executive branch and much of their record was not public or available for review following their nominations. Numerous executive branch documents were not included with their questionnaires, and much staff preparation time was devoted to extensive negotiations over document production with both nominations.

In 2005, Senator LEAHY agreed to a September 6 hearing date for the Roberts nomination before Judge Roberts had submitted his questionnaire, and before more than 75,000 pages of documents, primarily from the Reagan Library and the National Archives, came in throughout August and before the hearing began in September. Indeed, on the eve of the planned start of the hearing, on August 30, the Archives notified the Judiciary Committee they had found a new set of documents consisting of about 15,000 pages. These were delivered September 2, further complicating the hearing preparations. The hearings went ahead on September 12.

Furthermore, Hurricane Katrina hit New Orleans and Chief Justice Rehnquist passed away while Judge Roberts' nomination to be an Associate Justice, leading to a week-long delay in his hearing after he was then nominated to be the new Chief Justice.

Despite these obstacles, Judge Roberts was confirmed 72 days after President Bush named him as a nominee to the Supreme Court. If Judge Sotomayor is confirmed before the Senate recess in August, she will have been confirmed on a virtually identical timetable. If, however, she is not confirmed until the beginning of the Court's term in October, consideration of her nomination will have lasted nearly twice as long as that of Judge Roberts.

Confirming Judge Sotomayor before the August recess would give her time to prepare adequately for the Court's fall term, including the review of hundreds of petitions for certiorari for the Court's first conference and preparation for merits arguments. It would also allow her time to move and hire law clerks. I do not believe it is fair to delay Judge Sotomayor's confirmation if it is not absolutely necessary.

I appreciate that Senate Republicans are committed to a fair and respectful confirmation process for Judge Sotomayor. I believe it is important that Senators be permitted the opportunity to thoroughly review Judge Sotomayor's record and to fulfill our constitutional duty to provide advice and consent. I believe our proposed schedule for hearings and a floor vote on her confirmation will do so.

I signed that letter HARRY REID.

The hearing date is just 48 days after Judge Sotomayor was selected and is consistent with the 51-day average time between announcement of a Presidential selection and the start of their hearings. It has been that way for the past nine Court nominees who were confirmed.

The proposed alternative, that the hearings be held after the August re-

cess, or the first Tuesday after Labor Day, Tuesday, September 8, would subject Judge Sotomayor to the longest delay between selection and her confirmation hearing of any Supreme Court nominee in history, so far as we can tell. We stopped checking, frankly, when we got back to 1960. The GOP plan would delay her hearing until the 107th day after her selection. Robert Bork, the current record holder, waited 76 days. Thomas and Alito waited 64 and 67 days, respectively.

We are doing our utmost to have this nominee have a fair hearing. We want to make sure the Republicans have all the time they need, but history doesn't lie, and history suggests we are being overly generous with this good woman. She will be a wonderful addition to the Court, and I would hope we can move forward and have this matter resolved quietly, respectfully, and fairly.

Mr. LEAHY. Mr. President, if the Senator would yield. I might add to that. When I met with the distinguished Senator from Alabama last week, I had originally suggested it would be well within the appropriate timeframe of the other Justices—including Justice Roberts—that we have the hearing the week we came back from our week-long break of the Fourth of July. He had expressed—and I will let him speak for himself—some concern about that week after, and so I said: OK, we will put it a week later.

He, obviously, wanted to speak with his leadership, and that is fine. I had originally intended to speak about it on Friday, but I understood that the Republican leader had sent a letter to the majority leader because the majority leader had told me about that, and we are all aware of the date. There was never a question about what date I intended to start. I had known that for some time. But this morning I told him by telephone I was going to do that date. I talked to the President, and I so advised Judge Sotomayor.

The fact is, we are not doing something where we have problems with tens of thousands of pages just days before the hearing. We have all the material. I can't speak for other Senators, but we have a lot of work to do. We are paid well, and we have big staffs. I had hoped to take some vacation time during the Fourth of July week—I will not. I will spend that time preparing for it in my farmhouse in Vermont. I would suggest Senators may have to spend some time doing that. I know a lot of our staffs—both Republican and Democratic staffs—are going to have to plan to take time off. They are going to be working hard.

We have a responsibility to the American people. Certainly, we have a responsibility to have a Justice have time enough to get a place to live down here, hire law clerks, and get going.

Mr. REID. Will my friend yield for a moment?

Mr. LEAHY. Sure.

Mr. REID. It is also true, is it not, the announcement was made that dur-

ing the 5 weeks we are in session during July we are going to be working Mondays through Fridays, and you have informed the members of the Judiciary Committee—Democrats and Republicans—that would be the case? That is why—it is my understanding from the distinguished chair—you had announced the hearing was going to start on a Monday?

Mr. LEAHY. We are going to be in anyway. I would also note this gives us plenty of time.

We get elected in November, most of us—the first week in November—and when we are new Senators, we find it difficult to put everything together in 2 months, to go into the Senate in January. We should at least give the same courtesy to a Justice of the Supreme Court that we expect the American voters and taxpayers to give us.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, I wish to confirm and agree with most of what the majority leader and our chairman have said. The bottom line is, this is a nomination that should be easy to study up on. The record is public. The record has been available from the day she was nominated. There are not thousands and thousands of pages given to us at the end of the days, as I know my colleague, the chairman, has said.

I would like to make one other point. I know my colleague, our ranking minority member, Mr. SESSIONS, said Alito took some 90 days. That is true. But that included both the Thanksgiving and Christmas breaks. If you look at the actual working days, it was much shorter, as it has been for every other Justice. Let me repeat. If we were to do what the minority leader asks, and not vote on this nomination until well after the September break, it would be the longest nomination proceeding we have had for the most publicly available and most concise record.

This is not somebody whom we have to dig and find out things about, because she has had 17 years—17 years—of Federal decisions at the district and at the court of appeals level, more than any other nominee to the Supreme Court in 100 years—in 70 years, excuse me. No, in 100 years for Federal and in 70 years for Federal and State because Justice Cardozo had 29 years on the State bench. The record is ample and the record is public. Given the staff that I know the Judiciary minority has, as chairman of the Rules Committee, any lawyer worth their salt could more easily research the whole record in less than a month. So, actually, Chairman LEAHY has been kind of generous by delaying a week or two beyond that month.

Every day, as we speak now, there are, I daresay, tens of thousands of lawyers who have larger research dockets to do and are doing them in less

time. So the bottom line is very simple. One can only come to the conclusion that the reason for delay is delay alone, not needing time to study a public, ample record. So I would urge my colleagues on the other side to reconsider.

I have been told, at least on my subcommittee, that no one is going to participate in any meetings on anything. I don't know if that is true—I hope it isn't—that there is going to be an attempt to close down the Judiciary Committee on all the important issues we face.

Mr. KERRY. Mr. President, will the Senator yield for a question?

Mr. SCHUMER. I will yield to the Senator.

Mr. KERRY. Mr. President, I ask my colleague, in terms of the public record, is it true not only that this is the longest period of time, but if we were to delay it until September, that would be the longest period of time for consideration of any Justice for the Supreme Court in history?

Mr. SCHUMER. I believe my colleague from Massachusetts is correct.

Mr. KERRY. Certainly much longer than Justice Alito, Justice Roberts or any of the others whom we considered very rapidly?

Mr. SCHUMER. Clearly, longer than Roberts—much longer than Roberts—and somewhat longer than Alito. But Alito had both the Thanksgiving and Christmas breaks that were counted in that time, and we all know people are busy celebrating the holidays.

Mr. KERRY. I would also ask my colleague whether there is any rationale here whatsoever, that we have seen, for why this Justice's entire record, which is public, and has been poured over already, requires having the longest period in history, in terms of Justices of the Supreme Court, particularly given the issues that are at stake and the convening of a new Court in October?

Mr. SCHUMER. Well, I thank my colleague, and I think his points are well taken. As I mentioned before, the bottom line is, any lawyer worth his salt—and there are many very qualified lawyers in the minority on the Judiciary Committee—could research this record within a month, easily—easily. Right now, in the buildings here in Washington and in the buildings in New York and in the buildings in Birmingham, AL, are lawyers who have far more extensive research to do in less time and they do it well.

Mrs. BOXER. Would my friend yield for a question?

Mr. SCHUMER. I would be happy to yield.

Mrs. BOXER. I know we have to vote, but I wish to speak for a minute. As a woman, and being from California, we have such excitement about this nomination. I know we all agree this is a historic first, this nomination, and I think, given that and the fact that the women of this country comprise a majority and there is only one woman on the Court—and we certainly have never

had a Latino on the bench—I am asking my friend, does he not believe this nominee should be accorded equal treatment—equal treatment as it relates to the others who have been nominated to the same post?

That is all I am asking for. I am not on the committee, but I am supporting our Chairman LEAHY and the rest of the committee—at least those who are moving toward this in a schedule similar to Justice Roberts. I would ask, once again: Shouldn't we, who are very excited about this nomination and want to see it move forward, expect to have Judge Sotomayor treated in an equal fashion?

Mr. SCHUMER. I think my colleague from California makes an excellent point, and I would answer in the affirmative. We are not asking for more time. We are actually asking for less time, if you include vacation time.

It is not a situation like with Justice Roberts and even Judge Alito, where there were weeks and weeks before we were able to get private records that were available. No one has requested—Judge Sotomayor has not worked with the executive, so you don't have all those issues that have to be discussed and negotiated about executive privilege. She has a 17-year career on the bench. She has 3,000 opinions. If that is not an adequate record?

My office just in 2 days looked at every one, for instance, of the immigration asylum cases that were brought before her. There were 83—a pretty good sample, 83 percent. I don't recall the number, but there were a large number of cases, and 83 percent of the time we found she denied asylum to the immigrant applicant, which we concluded made it pretty clear that her fidelity to rule of law trumped her natural sympathy for the immigrant experience.

We just did that in a day or two. I don't have the kind of staff that my good friend, the Senator from Alabama, has. He should have it. He is the ranking minority Member. So it is very easy, given the number of staff, given the public record, given that there is no litigation or discussion about executive privilege—as there was with both nominee Alito and nominee Roberts—that a month seems to me to be ample time. The chairman, in his wisdom, to which I will defer, gave more than a month to the day of the nomination.

Mr. SESSIONS. Will the Senator yield for just one question?

Mr. SCHUMER. I am happy to yield to my colleague.

Mr. SESSIONS. I know the Senator from California raised the question of doing for this nominee as the others. If this goes forward as planned, it would be 48 days from nomination announcement to the first hearing. I wonder if the Senator from New York would acknowledge that for Justice Breyer it was 60 days; for John Roberts it was 55, the shortest; and Sam Alito was 70. This would be much shorter a period of time than the period we are being

given for this nominee, who has 3,500 cases.

I would ask if the Senator remembers saying with regard to the Alito nomination, when our Democratic colleagues asked that it be held over past Christmas, and at their request it was done so, he said:

It is more important to do it right than to do it quickly. And now we have a bipartisan agreement to do that.

So we just ask for a bipartisan agreement to do it right and not too fast. I don't know how we can work it out, but I think this is an arbitrary date, designed to move this process forward by a certain end game, faster than we need to. The vacancy, as the Senator knows, does not occur until October when Justice Souter steps down. So we do need to complete it by then. I have told the President I will work to make sure that occurs.

Mr. SCHUMER. I thank my colleague.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. If I might respond, with nominee Alito, now Justice Alito, there was a Christmas break. As I understand it, according to Chairman LEAHY it was the majority, Republicans, who asked we go to that Christmas break, not the Democrats. In Justice Roberts' case, I believe Katrina intervened and everybody had to drop everything and work on the emergency of Katrina.

If you look at days where the record is available, and it has been available right from the get-go here, and no vacation, no intervening long recesses and things like that, the minority here, any Senator here, will have had more time to scrutinize this record than we have had for most other Judges. Again, underscored by the fact that the record is public, is open and ample.

No one has to go look for needles in a haystack to try to figure out the record of Judge Sotomayor. It is very extensive and ample. With Justice Roberts, we only had a few years where he was on the bench and all the rest of his record was in the executive and it took us weeks, I think—the chairman probably remembers this better than me—months to get the record.

With that, I yield the floor. I know we want to get on with the vote.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for up to 3 minutes before the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I join in saying the chairman of the Senate Judiciary Committee, Senator LEAHY, has come up with a reasonable timetable for considering this historic nomination. I believe his setting Monday, July 13, for the hearing is well within the ordinary bounds of time allotted for Supreme Court nominees. The important date is when paperwork is submitted. When it came to the submission of paperwork before the hearing

actually took place, basically, when it came to Judge Sotomayor, she completed her paperwork setting forth her key information, background, on June 4. The July 13 hearing will take place 39 days after that paperwork was submitted.

In the case of Justice Alito—who incidentally had participated in 4,000 cases, 1,000 more than Judge Sotomayor—in that case, in Justice Alito's case, the hearing took place 40 days after we received his work; for Chief Justice John Roberts, 43 days. This is entirely consistent.

I might also add a point that was raised by Senator UDALL of New Mexico. Judge Sotomayor is no stranger to this Chamber. She was nominated first for the district court bench by President George Herbert Walker Bush and then nominated for the district court by President Clinton. That is an indication that we have seen her work before. We are aware of her background.

The last point I would make, consistent with the Senator from California, is that justice delayed could be justice denied. In this case, if we continue this hearing for a record-breaking period of time—which has been requested by the Republican side—it will mean we will have a vacancy on the Supreme Court when it begins its important work this fall.

What Chairman LEAHY has asked for is reasonable. It is consistent with the way Judges were treated under President Bush and at the time the Republicans had no objection or complaint about it. This is a reasonable timetable. I urge my colleagues to support Chairman LEAHY.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1256, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1256), to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, and to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, and for other purposes.

Pending:

Dodd amendment No. 1247, in the nature of a substitute.

Burr/Hagan amendment No. 1246 (to amendment No. 1247), in the nature of a substitute.

Schumer (for Lieberman) amendment No. 1256 (to amendment No. 1247), to modify provisions relating to Federal employees retirement.

The PRESIDING OFFICER. The question occurs on amendment No. 1246

by the Senator from North Carolina, Mr. BURR.

Mr. BURR. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Missouri (Mrs. McCASKILL) are necessarily absent.

The PRESIDING OFFICER (Mr. BEGICH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 60, as follows:

[Rollcall Vote No. 205 Leg.]

YEAS—36

Alexander	DeMint	Martinez
Barraso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Gregg	Risch
Bunning	Hagan	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Crapo	Kyl	Wicker

NAYS—60

Akaka	Feinstein	Murray
Baucus	Gillibrand	Nelson (NE)
Bayh	Grassley	Nelson (FL)
Begich	Harkin	Pryor
Bennet	Inouye	Reed
Bingaman	Johnson	Reid
Boxer	Kaufman	Rockefeller
Brown	Kerry	Sanders
Burr	Klobuchar	Schumer
Cantwell	Kohl	Shaheen
Cardin	Landrieu	Snowe
Carper	Lautenberg	Specter
Casey	Leahy	Stabenow
Collins	Levin	Tester
Conrad	Lieberman	Udall (CO)
Cornyn	Lincoln	Udall (NM)
Dodd	Lugar	Warner
Dorgan	Menendez	Webb
Durbin	Merkley	Whitehouse
Feingold	Mikulski	Wyden

NOT VOTING—3

Byrd	Kennedy	McCaskill
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The amendment (No. 1246) was rejected.

Mr. DODD. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DODD. Mr. President, if I may—I wish to ask unanimous consent to go into morning business at the conclusion of these brief remarks—there are several amendments that are germane amendments to this bill that we ought to consider, and my hope is that will happen. I will let the leadership determine what the rest of the day will be like, but my hope is we can complete these other germane amendments that are before us. I know there is a package of amendments on other things to be looked at, and I am certainly prepared to do that.

My good friend, the Senator from Wyoming, Senator ENZI, is not on the floor at this minute, but he and I have had a good relationship on this bill,

and we would like to complete it if we could. We have been now almost a week and a half on this legislation, so it shouldn't take much more to get to final passage.

So I make that offer to my colleagues, that they can sit down and see if we can't resolve some of those matters or at least allow for some time for debate on those outstanding germane amendments that are pending.

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent to proceed to morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized.

ORDER OF PROCEDURE

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Missouri be given a couple of minutes to make his speech for the record and that afterwards I immediately be given the floor.

Mr. WYDEN. Mr. President, reserving the right to object, and I do not intend to object, I would ask unanimous consent to be recognized following the remarks of the distinguished Senator from Missouri, and then following the remarks of the distinguished Senator from Utah, that I be allowed to follow him.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, I wish my colleague to understand that I may take longer than 10 minutes, so I ask unanimous consent for that.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Missouri is recognized.

NOMINATION OF LIEUTENANT GENERAL STANLEY MCCHRYSTAL

Mr. BOND. Mr. President, today in the Appropriations Defense Subcommittee we heard about some good things going on in South Asia and the new strategy for both Afghanistan and Pakistan to bring military and civilian efforts into that region.

I understand the Armed Services Committee has just approved the nomination of LTG Stanley McChrystal, an ex-commander of the international security forces, the final senior-level military position in the theater.

The dedicated members of the American military, our intelligence professionals and State Department officials continue to serve our country well, but it is essential that the efforts of each be woven together to form a comprehensive strategy that will not only win the battle but win the war. This will take senior leaders of great vision in all areas of our government.